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EXAMINER

ARAQUE JR, GERARDO

ART UNIT

PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/098,574	LEPRINCE, SOAZIG	
	Examiner	Art Unit	
	Gerardo Araque Jr.	3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27, 74-98, 179-198 and 239-258 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27, 74-98, 179-198 and 239-258 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1 – 27 and 74 – 98** are rejected under 35 U.S.C. 101 because based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiner is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. Thus, **claims 1 – 27 and 74 – 98** are non-statutory since they may be performed within the human mind.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1 – 6, 8, 10 – 16, 19 – 27, 74 – 81, 83 – 98, 179 – 186, 189 – 190, 192, 194 – 198, 239 – 246, 247, 249 – 250, 252, 254 – 258** are rejected under 35

U.S.C. 102(e) as being anticipated by **Marapane (US PGPub 2002/0010556 A1)**.

5. In regard to **claims 1 and 179**, **Marapane** discloses a method for providing hair tinting information, comprising:

receiving first information representative of at least one state of a subject's hair
(Page 1 ¶ 7; Page 2 ¶ 31 prompts the recipient to take a plurality of color measurements, which can also be carried out by a beauty counselor);

receiving second information representative of at least one desired hair tinting result of the subject **(Page 1 ¶ 8, 10; Page 2 ¶ 31 prompts the recipient to choose from a family of colors, i.e. desired hair tinting result; wherein the family of colors pertains to the general color of shades the recipient desires);**

providing information relating to a plurality of hair tinting products based on at least the first information and the second information **(Page 1 ¶ 6 – 10; Page 2 ¶ 32 based on the input as discussed above the system prompts the recipient to select**

from a group of achievable end hair colors which represent various color shades within the family of color selected);

receiving third information representative of the subject's selection of at least one hair tinting product in the plurality of hair tinting products (**Page 1 ¶ 6 – 10; Page 2 ¶ 32 wherein the customer would select the desired shade from the various color shades that were presented**); and

providing information relating to the at least one selected hair tinting product (**Page 1 ¶ 6 – 10; Page 2 ¶ 29; Page 2 – 3 ¶ 32 wherein the system would present the recipient with the achievable end hair color based on the above made inputs accurately representing the post-dying color of the recipient than the ordinary color charts frequently found on the back side of most hair coloring agent packaging and recommends the particular hair coloring agent**).

6. In regard to **claims 2 and 75**, **Marapane** discloses wherein the receiving first information includes receiving at least one of a subject's natural hair color and a subject's percentage of senescent hair (**Page 2 ¶ 30**).

7. In regard to **claims 3, 76, 180 – 182, 184, 186, 240 – 242, 244, and 246**, **Marapane** discloses wherein the first information is received from at least one of a portable measuring device, a touch-screen display, a mouse, and a keyboard (**Page 6 – 7 ¶ 134 – 139**).

8. In regard to **claims 4 and 77**, **Marapane** discloses further comprising: providing a plurality of natural hair color examples, wherein receiving first information comprises receiving a subject's natural hair color selection corresponding to one of the plurality of

natural hair color examples which best corresponds to the subject's natural hair color **(Page 2 ¶ 31)**; and storing the subject's natural hair color selection **(inherently included)**.

9. In regards to **claim 5, Marapane** discloses further comprising: providing a plurality of examples of senescent hair percentages, wherein the receiving first information comprises receiving a subject's percentage of senescent hair selection corresponding to one of the plurality of examples of senescent hair percentages which best corresponds to the subject's percentage of senescent hair **(Page 3 ¶ 40)**.

10. In regard to **claims 6 and 79, Marapane** discloses further comprising: receiving product information corresponding to the plurality of hair tinting products, wherein the received product information includes at least one of suitability of covering a percentage of senescent hair, natural application base, color effect obtained, color trademark, base shade, shade of highlights, lightening power, bleaching power, tone, product range, and product duration **(Page 1 ¶ 10; Figure 12)**.

11. In regard to **claims 7 and 80, Marapane** discloses wherein the product information is received from a local storage medium, including at least one of a hard disk and a solid state memory **(Page 6 ¶ 135 - 137)**.

12. In regards to **claims 8, 81, 185, and 245, Marapane** discloses wherein the product information is received over a network **(Page 7 ¶ 137)**.

13. In regard to **claims 10 and 83, Marapane** discloses wherein the product information is representative of products marketed under at least one brand name **(Figure 2)**.

14. In regard to **claims 11 and 84**, **Marapane** discloses further comprising:
selecting from the plurality of hair tinting products, based on the subject's percentage of senescent hair, a first subset of hair tinting products (**Figure 8**); and
selecting from the first subset, based on the subject's natural hair color, a second subset of hair tinting products (**Figure 9**).
15. In regard to **claims 12 and 85**, **Marapane** discloses wherein the selecting from the first subset comprises:
selecting at least one of a) hair tinting products having a natural application base corresponding to the subject's natural hair color (**inherently included when deciding on a product**), and b) hair tinting products which satisfy at least one condition specific to at least one type of color result (**Logically required since a specific color result requires for the corresponding hair tinting product. That is to say, if the recipient wants to have their hair dyed red then the hair tinting product that would be selected would be for dyeing the recipient's hair red, not the hair tinting product for dyeing the recipient's hair blonde, for example.**).
16. In regard to **claims 13 and 86**, **Marapane** discloses wherein the receiving second information includes receiving a desired type of color result by the user, wherein the desired type of color result is selected from attainable types of color result (**Page 1 ¶ 6 – 10**).
17. In regard to **claims 14 and 87**, **Marapane** discloses wherein the attainable types of color result include at least one of lightness, colored shade, and cover senescent hair (**Page 3 – 4 ¶ 40 – 41**).

18. In regard to **claims 15 and 88**, **Marapane** discloses wherein the lightness includes at least one of streaks and whole head **(inherently included when deciding on a product see also Page 2 ¶ 32)**.

19. In regard to **claims 16 and 89**, **Marapane** discloses wherein the colored shade includes at least one of intense result, natural result, and colored streaks result **(inherently included when deciding on a product see also Page 2 ¶ 32)**.

20. In regards to **claims 19 and 90**, **Marapane** discloses wherein the providing information relating to a plurality of hair tinting products further comprises providing ranges of hair tinting products **(Figure 10)**.

21. In regards to **claims 20 and 91**, **Marapane** discloses wherein the receiving third information representative of the subject's selection further comprises receiving information associated with at least one desired range **(Page 2 ¶ 30)**.

22. In regard to **claims 21 and 92**, **Marapane** discloses further comprising:
receiving a selection of at least one desired range of hair tinting products **(Page 1 ¶ 8, 10; Figure 9)**; and

providing information relating to the hair tinting products having at least one range corresponding to the at least one desired range **(Page 1 ¶ 6 – 10)**.

23. In regard to **claims 22 and 93**, **Marapane** discloses wherein at least one shade is associated with the at least one range **(Figure 12)**.

24. In regard to **claims 23 and 94**, **Marapane** discloses further comprising: receiving information related to a subject's desired tone **(Page 1 ¶ 8, 10; Figure 9)**; determining the hair tinting products within the at least one range having a tone corresponding to the

desired tone (**Page 1 ¶ 6 – 10**); and indicating at least one shade which corresponds to the desired tone (**Figure 12**).

25. In regard to **claims 24 and 95**, **Marapane** discloses further comprising enabling the subject to purchase at least some of the hair tinting products (**inherently included wherein Marapane discloses that the system could be used in a salon which would indicate that a purchase would be made Page 2 ¶ 29**).

26. In regard to **claims 25 and 96**, **Marapane** discloses further comprising offering at least some of the hair tinting products for sale (**inherently included wherein Marapane discloses that the system could be used in a salon which would indicate that a purchase would be made Page 2 ¶ 29**).

27. In regard to **claims 26, 97, 189, and 249**, **Marapane** discloses wherein the method is performed at least substantially entirely at a point of sale for the hair tinting products (**inherently included wherein Marapane discloses that the system could be used in a salon which would indicate that a purchase would be made Page 2 ¶ 29**).

28. In regard to **claims 27 and 98**, **Marapane** discloses wherein the information relating to at least one hair tinting product comprises information relating to at least one of a plurality of products and a plurality of subsets of products (**Figures 8 – 10**).

29. In regard to **claims 74 and 239**, **Marapane** discloses a method for providing hair tinting information, comprising:

receiving first information representative of at least one state of a subject's hair

(**Page 1 ¶ 7**);

providing, based on at least the first information, at least one type of color result prior to receiving information representative of a desired type of color result of a subject (**Page 1 ¶ 6 – 7; Fig. 1 wherein steps 160 Take readings, 170 Family color, and 180 Display achievable end colors are all performed before steps 190 Desired end color and 200 Product recommendation; moreover, Marapane further discloses that the user may go back and forth between these steps before deciding on a desired type of color result {see ¶ 32, for example}[see also discussion made under “Response to Arguments” wherein the Family of Colors is only presented to the recipient after the recipient has inputted their hair’s current state]);**

receiving second information representative of a desired type of color result of the subject, the desired type of color result being associated with said at least one type of color result (**Page 1 ¶ 8, 10; Figure 9; Page 2 ¶ 31 – 32 wherein the recipient is presented with the Family of Colors after inputting their hair’s current state and wherein the recipient then chooses their desired hair color from the Family of Colors that were presented to the recipient); and**

providing, based on at least the first information and the second information, information relating to at least one hair tinting product (**Page 1 ¶ 6 – 10**) .

30. In regards to **claim 78, Marapane** discloses further comprising:

providing a plurality of examples of senescent hair percentages (**Page 2 ¶ 30 – 31); and**

31. receiving a subject's percentage of senescent hair selection corresponding to one of the plurality of percentages of senescent hair examples which best corresponds to the subject's percentage of senescent hair (**Page 2 ¶ 30 – 31**).
32. In regard to **claims 183 and 243**, **Marapane** discloses wherein the measuring device is a portable instrument for measuring a subject's hair color (**Page 2 ¶ 31**).
33. In regards to **claims 190 and 250**, **Marapane** discloses wherein the apparatus operates substantially as a stand-alone unit without being connected to a computer server (**Page 2 ¶ 31**).
34. In regard to **claims 192 and 252**, **Marapane** discloses further comprising at least one swatch sampler (**Page 3 ¶ 40**).
35. In regard to **claims 194 and 254**, **Marapane** discloses further comprising at least one swatch sampler for estimating the quantity of senescent hair (**Page 3 ¶ 40**).
36. In regard to **claims 195 and 255**, **Marapane** discloses wherein the at least one swatch sampler further includes two sets of samplers enabling the quantity of senescent hair to be evaluated, one corresponding to a subject having fair hair and one corresponding to a subject having dark hair (**Page 3 ¶ 40**).
37. In regard to **claims 196 and 256**, **Marapane** discloses wherein the at least one swatch sampler for estimating the quantity of senescent hair is comprised of at least five swatches, corresponding to 0%, less than 30%, 30% to 50%, 50% to 80%, and greater than 80% (**Page 3 ¶ 40**).
38. In regard to **claims 197 and 257**, **Marapane** discloses wherein the apparatus is adjacent to at least one set of shelves suitable for hair tinting products (**Page 2 ¶ 29**;

wherein the invention as disclosed by Marapane can be used in a salon, which would obviously have the apparatus adjacent to shelves suitable for hair tinting products).

39. In regard to **claims 198 and 258, Marapane** discloses further comprising a lighting means for lighting a subject's hair (**Page 2 ¶ 29; obviously included wherein a salon would have lighting means**).

Claim Rejections - 35 USC § 103

40. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

41. **Claims 7, 9, 17 – 18, 82, 187 – 188, 247 – 248, 191, 193, 251, and 253** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Marapane et al. (US PGPub 2002/0010556 A1)**.

42. In regard to **claims 9 and 82, Marapane** discloses that the method is carried out on a network, but fails to explicitly disclose the Internet. However, it is old and well known that the Internet is also a network. Moreover, it would have been obvious to one skilled in the art using the teachings of Marapane that the method can also be carried out anywhere (**Page 2 ¶ 29**), including the Internet, in order to avoid a large gathering of people waiting within a salon, for example.

43. In regards to **claim 17, Marapane** discloses receiving second information includes receiving the desired duration of hair tinting (**wherein it would be obvious**

when a customer selects a hair dying product it would include the type of dye, i.e. temporary, semi-permanent, and permanent).

44. In regards to **claim 18**, **Marapane** discloses further comprising:

determining the product durations for at least some of the hair tinting products **(obviously included in that all hair dying products have various durations, such as temporary, semi-permanent, and permanent);** and

selecting hair tinting products having a product duration corresponding to the desired duration **(obviously included dependent on the customers desire).**

45.

46. In regard to **claims 187 and 247**, **Marapane** discloses an image acquisition device for capturing an image of the subject for displaying on the display **(Page 1 ¶ 10 in which it would have been obvious to one skilled in the art that an image acquisition device would be required in order to carryout the method disclosed by Marapane).**

47. In regard to **claims 188 and 248**, **Marapane** discloses wherein said image acquisition device comprises a camera **(Page 1 ¶ 10 in which it would have been obvious to one skilled in the art that an image acquisition device would be required in order to carryout the method disclosed by Marapane, further still, it would have been also obvious that a camera would be an image acquisition device).**

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48. In regards to **claims 191 and 251**, **Marapane** discloses that the method can be carried out in a salon wherein it would have been obvious to one skilled in the art that salons have mirrors.

49. In regard to **claims 193 and 253**, **Marapane** discloses wherein the at least one swatch sampler includes a sampler of colored swatches comprising shade colors of black, brown, dark chestnut, chestnut, pale chestnut, dark blonde, blonde, light blonde, very light blonde, and lightest blonde (**Page 4 ¶ 41 moreover the various shades disclosed does not affect the function of the invention**).

Response to Arguments

50. Applicant's arguments filed **2/28/08** have been fully considered but they are not persuasive.

Rejection under 35 USC 112, second paragraph

51. Rejection under 35 USC 112, second paragraph, has been withdrawn due to amendments.

Rejection under 35 USC § 102

Independent Claim 1

52. Applicant argues that **Marapane** does not disclose a method for providing hair tinting information including, among other things, "providing information relating to a plurality of hair tinting products" and "receiving third information representative of the subject's selection of at least one hair tinting product in the plurality of hair tinting products," as recited in claim 1. (Emphasis added)

The Examiner disagrees. Specifically, the applicant argues that **Marapane** fails to disclose, “providing information relating to a plurality of tinting products.” However, **Marapane** clearly states that the method is embodied in a computer system and is located at a retail counter for the purpose of **analyzing and recommending** hair coloring products (Page 2 ¶ 29).

The applicant argues this citation by stating that, “...the system described in the rest of the Marapane publication appears to be configured to provide information about only a single product once the user has made a selection from a plurality of colors. Because paragraph [0029] refers to an embodiment wherein the system is located at a retail counter, the mention of recommending plural products in paragraph [0029] appears to merely refer to the fact that multiple customers who visit the retail counter might each have a product recommended to them. In other words, this appears to be describing multiple occasions on which the system is used, and not any capability of displaying a plurality of products from which to choose.”

However, what is stated in ¶ 29 is that the system is used for the purpose of “analyzing and recommending.” In other words the system is not merely there to just recommend products, but to recommend products based on the hair analysis that is described within ¶ 30 – 32. **Marapane** further discloses that a beauty counselor can be used in order to carry out the hair analysis and **claim 18** further discloses that the method can be conducted in various locations, such as a salon and a retail store. From this it can be concluded that the method and system is fully capable of displaying a

plurality of products since the method and system is conducted in a salon or retail store wherein a salon and retail store carries a variety of hair tinting products.

Further still, **Marapane** also discloses that the system identifies the associated hair color agents (e.g. VS Sassoon products) (**Page 2 ¶ 30**). Although, the disclosure only shows one brand of tinting products it is inherent that within that one brand there are multiple products in order to achieve the different hair color results, a point that has already been discussed in prior Office Actions as well as over the telephone interview conducted on January 29, 2008. Despite of this, the applicant still disagrees with this assertion. The applicant asserts that displaying "end colors" is not equivalent to displaying "products" (**see at least bottom of Page 45 of applicant's Remarks**).

According to this logic, it appears to the Examiner that the applicant believes that **Marapane** discloses that the recommended product, i.e. one hair dying product, can somehow achieve all of the displayed "end colors". However, as already discussed, the Examiner asserts that by displaying an "end color" the associated color agent (product) would be displayed or presented, in the event that the method and system is carried out at a salon, to the customer.

The applicant further argues the inherency discussion found in the Office Action that was sent out on October 30, 2007 on Page 45 of the Remarks:

"To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is **necessarily** present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient."

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (emphasis added) (cited in M.P.E.P. § 2112)”

However, as already discussed **Marapane** has already made it clear that each color is associated with a coloring agent, i.e. tinting product within the family (brand) of VS Sassoon products. One of ordinary skill in the art of hair tinting would have recognized that the system of **Marapane** provides VS Sassoon products (brand) and that within the family (brand) of VS Sassoon products the system will display which specific coloring agent will be used to achieve the color result. One of ordinary skill in the art would have also recognized, based on the current claim language, the “information relating to a plurality of hair tinting products” can come in different forms. That is to say, the information can be in the form of words or pictures; and, in the event, that only an image of a color result is displayed (provided information), for example, then it can be surmised that the image of each color result is, indeed, **related** to the corresponding coloring agent (product).

In the end, **claim 1** claims and is interpreted as follows:

1. A method for providing hair tinting information, comprising:
receiving first information representative of at least one state of a subject's hair (**Page 1 ¶ 7; Page 2 ¶ 31 prompts the recipient to take a plurality of color measurements, which can also be carried out by a beauty counselor**);
receiving second information representative of at least one desired hair tinting result of the subject (**Page 1 ¶ 8, 10; Page 2 ¶ 31 prompts the recipient to choose from a family of colors, i.e. desired hair tinting result; wherein**

the family of colors pertains to the general color of shades the recipient desires);

providing information relating to a plurality of hair tinting products based on at least the first information and the second information (**Page 1 ¶ 6 – 10; Page 2 ¶ 32 based on the input as discussed above the system prompts the recipient to select from a group of achievable end hair colors which represent various color shades within the family of color selected);**

receiving third information representative of the subject's selection of at least one hair tinting product in the plurality of hair tinting products (**Page 1 ¶ 6 – 10; Page 2 ¶ 32 wherein the customer would select the desired shade from the various color shades that were presented);** and

providing information relating to the at least one selected hair tinting product (**Page 1 ¶ 6 – 10; Page 2 ¶ 29; Page 2 – 3 ¶ 32 wherein the system would present the recipient with the achievable end hair color based on the above made inputs accurately representing the post-dying color of the recipient than the ordinary color charts frequently found on the back side of most hair coloring agent packaging and recommends the particular hair coloring agent).**

Independent Claim 74

53. Applicant argues that **Marapane** does not disclose, “providing...at least one type of color result prior to receiving information representative of a desired type of color result of a subject.” The applicant further argues that claim 74 requires, “the at least

one type of color result to be provided 'prior to' receiving information representative of a subject's desired type of color result."

However, as already discussed, **Marapane** requires the recipient to input the current state of the recipient's hair, which anticipates **Claim 74 part (a)**. Regarding **Claim 74 part (b)** the applicant claims, "providing, based on at least the first information, at least one type of color result prior to receiving information representative of a desired type of color result of a subject." As a result, the Examiner asserts that until the recipient has provided the first information, i.e. current state of the recipient's hair, the information that is subsequently provided will not be presented to the recipient. That is to say, the **Marapane** does, indeed, disclose, "providing, based on at least the first information, at least one type of color result prior to receiving information representative of a desired type of color result of a subject," in that until the first input is received (first information) by the recipient, the family of colors (types of color results as discussed above regarding claim 1) will not be provided to the recipient. More precisely, once the recipient has provided the current state of the hair then the system will provide the family of colors for the recipient to choose from, which in turn would result in having the, "desired type of color result being associated with said at least one type of color result."

Rejection under 35 USC § 103

54. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. KSR forecloses the argument that a specific teaching, suggestion, or

motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*,--USPQ2d--, slip op. at 20, (Db. Pat. App. & Interf. June 25, 2007)(citing *KSR*, 82 USPQ2d at 1396)(available at <http://www.uspto.gov/web/offices/dcom/bpai/prec/fd071925.pdf>).

55. All rejections made towards the dependent claims are maintained due to the lack of a reply by the applicant in regards to distinctly and specifically point out the supposed errors in the examiner's action in the prior Office Action (37 CFR 1.111). The Examiner asserts that the applicant only argues that the dependent claims should be allowable because the independent claims are unobvious and unpatentable over Marapane.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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